

REMARKS

Claims 1, 4-6, 8, 9, and 11-16 are pending in this application for which applicant seeks reconsideration.

Amendment

Claims 1, 6, and 9 have been amended to further improve their form, as well as to overcome the § 112 rejection. The language "a server controlling section" has been changed to --a server controller--, and the language "a sending section" has been changed to --a terminal controller--. Note that paragraph 29 of the published application (USPGP 2004/0064380) defines the server SV as having the same structure as a PC illustrated in Fig. 1B. New claim 16 substantially parallels claim 1, but are directed to a method. No new matter has been introduced.

§ 112 Rejection

The examiner objected to the specification and rejected all pending claims 1, 4, 5, 9, 11-15 under 35 U.S.C. § 112, first and second paragraphs, because the examiner believes that the original specification does not provide support for the language *a server controlling section that at least (a) supplies, via downloading, the contents to each of the information processing terminals associated with the user* as set forth in previously presented claim 1 and similarly set forth in claim 9. Applicant stated that the above passage calls for the same contents requested by the user to be downloaded from the server (e.g., SV) to a plurality of terminals (e.g., PCa1, PCa2) associated with the user.

According to the examiner, paragraphs 39 and 40 of the published application merely disclose that the user can access the server and that the user is able to individually download the content into his/her devices. In other words, the examiner alleges that the original specification merely supports the contents being capable of being downloaded into the user's devices, but does not support downloading "any content" requested by the user to "all of the devices" owned by the user.

Applicant submits that the above-passages in question also reads on paragraphs 39 and 40 since it does not explicitly recite downloading the contents to "all of the devices." Nonetheless, the above-passages in question have been deleted as is not needed to distinguish over the applied reference.

Art Rejection

All pending claims 1, 4-6, 8, 9, and 11-15 were rejected under 35 U.S.C. § 102(b) as anticipated by Nozaki (USPGP 2002/0036800).

Claim 1 calls for, *inter alia*, the following features:

- (1) a contents supplying server apparatus having:
 - (A) a server storing device storing, together with numerous contents, user information for the user, **including user ID information representing a plurality of information processing terminals associated with the user** and contents purchase information comprising contents ID information and copy control data, wherein the copy control data includes a total number of times the downloaded contents are allowed to be copied to an external apparatus or recording medium;
 - (B) a server controller that, in response to a copy permission request from the user via one of the information processing terminals:
 - (i) supplies the copy control data of the user to the one information processing terminal, and
 - (ii) **decrements the total number of times the downloaded contents are allowed to be copied from any of the information processing terminals associated with the user;** and
- (2) a plurality of information processing terminals each having a terminal controller **that sends to the contents supplying server apparatus a copy permission request for copying the downloaded contents to the external apparatus or recording medium each time before the downloaded contents are to be copied to the external apparatus or recording medium.**

First, as to the claimed feature (1)(B)(ii) outlined above, the examiner continues to assert that Nozaki discloses a server that keeps track of copy count and changes the stored value representing the copy count unit it reaches zero, relying on paragraphs 62, 63, 105-107, 113, 146, 147, 207, 212, and 213.

In contrast to the examiner's assertion, applicant submits that Nozaki discloses the PC (e.g., the information processing terminal), and not the server, decrementing the count. Specifically, while Nozaki discloses the problem associated with paying multiple fees for the same downloaded contents, such as due to the user using different computers, Nozaki takes a different approach to solving this problem than the claimed invention. In Nozaki, the user

information, including copy control data, is stored LOCALLY in the user PC. The server 1 initially sends the copy count information to the user PC in response to a request by the user PC. The user PC duplicates the music data based on the limitations imposed by the available count information. See Fig. 3 and paragraph 63:

[0063] The available copy count setting section 22 is a block to set available copy count information of distribution-use music data based on the desired available copy count of the distribution-use music data, distribution of which has been requested by the PC. More specifically, data containing the available copy count information thus set by the available copy count setting section 22 is sent to the PC, and the PC makes a duplicate of the data based on limitations imposed by the available copy count information.

In Nozaki, rewriting of the copy control data each time the music data is copied is done at the PC side. See Fig. 5, paragraph 80, Figs. 4 (which shows the arrangement of the PC) and 10, and paragraphs 140-143.

[0141] In S42, **the data copying section 26 checks the available copy count information of the distribution-use music data**, so as to confirm whether the current available copy count information is at or exceeds the required available copy count. Here, if the current available copy count information is less than the required available copy count, unavailability of copying is informed to the user before the process ends. In this case, if required, the user may make the request for reuse.

The available copy count data is always rewritten at the PC side when the music data is copied. The passages relied upon by the examiner at best disclose that the distribution server 1 includes in the download contents, a header containing a copy count or reproducible environment information. Nozaki does not disclose anywhere that the **server** changes the count information or keeps track of copy count information or that the PC sends the count information to the server each time it copies the already downloaded music contents. Indeed, while the server initially sets the maximum number of copies the music contents can be copied, it does not keep track of the copy count. That is, in Nozaki, the PC side keeps track of number of times the already downloaded contents have been copied.

The server side merely provides the total number of allowed copies to be made that it initially sets, in the header of the downloaded contents. The total number provided in the header does not change. That is, in contrast to the examiner's assertion, the server does not decrement each time a copy is made by the PC. Rather, Nozaki merely discloses downloading

the requested contents to a PC, and the PC then manages distribution and copy limitations, without any server involvement.

In the claimed feature (1)(B)(ii), the server apparatus keeps track of the number of times the already downloaded contents have been copied by the requirement of the PC sending a copy permission request to copy the already downloaded music data from the server each time the music data is to be copied within the available copy count (see claimed feature (2)). This is different from the way Nozaki keeps track of the copy count.

Applicant thus submits that Nozaki does not disclose or teach claimed feature (1)(B)(ii) outlined above.

Second, as to the claimed feature (2) outlined above, the examiner asserts that the structure of the "sending section" is anticipated. According to the examiner, because the claims are rejected under § 102, Nozaki merely needs to disclose a sending section that is capable of carrying out the functions recited in the claims. Claim 1 now recites a controller that carries out the sending function. In this respect, a controller that executes a certain new and unobvious function becomes a specialized controller, which is structural, that is physically different from a controller that does not. See *In re Lowry*, 32 F.3d 1579, 1583, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). That is, the functional limitation(s) of the controller positively defines what makes the controller unique. The claimed controller's function must be given full patentable weight. Note also that claim 9 (as well as new claim 16) call for method steps. The examiner's "structure" argument clearly does not apply to a method step.

The examiner also asserts that Nozaki provides the claimed function of the "sending section." Specifically, the examiner asserts that Nozaki's sending section can send a copy permission request each time a copy is to be made. In this respect, the examiner somehow urges that allowing copyright holders or distributing servers limiting copy count at their discretion would require a reuse information key request before making a copy, relying on paragraphs 100, 113, 141, 146.

Applicant submits that the paragraphs relied upon by the examiner do not disclose or teach, or provide any basis for, having the user PC send a copy permission request **each time a copy is made**. There simply is no teaching anywhere for having the PC send a copy permission request each time a copy is made. Note that the reuse request is made by the PC only after it determines that the copy count remaining is zero.

For the foregoing reasons, applicant submits that Nozaki also would not have disclosed or taught claimed feature (2) outlined above.

As to the claimed feature (1)(A) outlined above, the examiner alleges that the server stores user ID information representing a plurality of information processing terminals associated with the user, relying on paragraphs 63, 73, 80, 113, 190, 212-215, 220, and 221.

In contrast to the examiner's assertion, Nozaki merely discloses a server storing copy control data indicating a maximum allowed copies. None of the passages relied upon by the examiner disclose any mention of any ID information representing a plurality of information processing terminals associated with the user.

Accordingly, applicant submits that Nozaki also would not have taught the claimed feature (1)(A) outlined above.

Applicant submits that Nozaki also would not have disclosed or taught independent claims 9 and 16 (which parallel claim) for the similar reasons set forth above.

Conclusion

In view of the foregoing reasons, applicant submits that the pending claims distinguish over Nozaki and are in condition for allowance. Should the examiner have any issues concerning this reply or any other outstanding issues remaining in this application, applicant urges the examiner to contact the undersigned to expedite prosecution.

Respectfully submitted,

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